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Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1127

OWEN W. CRUMPACKER,

Petitioner,

vs.

INDIANA SUPREME COURT DISCIPLINARY COMMISSION and SAUL I. RUMAN, COMPLAINANT,

Respondents.

On Petition For Writ Of Certiorari To The Supreme Court Of Indiana

BRIEF FOR RESPONDENT SAUL I. RUMAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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BRIEF FOR RESPONDENT SAUL I. RUMAN IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

I.

OPINIONS BELOW

The decision and opinion giving rise to Petitioner's application for a Writ of Certiorari was made and entered by the Supreme Court of Indiana on November

29, 1978. While said decision and opinion are not yet officially published and reported in the Indiana Reports, the same appear(s) at 383 N.E. 2nd 36 entitled *In the Matter of Owen W. Crumpacker.* The said decision and opinion is set out in Petitioner's Appendix at A20-A77. The effect of the subject decision and opinion was to disbar petitioner as an attorney in the State of Indiana. (The order of disbarment appears at A71).

II.

JURISDICTION

Petitioner asserts that this Court has jurisdiction to issue its Writ of Certiorari to review the disbarment proceedings in the Supreme Court of Indiana under the provisions of 28 U.S.C. § 1257(3).

Respondent respectfully objects to the exercise of jurisdiction of this Court to issue its extraordinary Writ of Certiorari in this matter for the reason that Petitioner has failed to set forth in the manner provided by the Rules, or otherwise, grounds invoking the jurisdiction of this Court, under either 28 U.S.C. § 1257(3) or Supreme Court Rule 19, all as more fully set out in the argument section of this Brief, *infra.* (Supreme Court Rule 24(2)).

III.

CONSTITUTIONAL PROVISIONS STATUTES AND RULES

Petitioner has set out in this corresponding section of his Petition for Writ of Certiorari at pages 4-6 thereof portions of amendments I and XIV to the Constitution of the United States and Article I, Bill of Rights, § 9-13, inclusive, and has cited, in addition thereto, (but not set out at length except in his Appendix) the Indiana Rules for Admission to the Bar and Discipline of Attorneys, the partial text of which is set forth in Petitioner's Appendix at A78 through A84.

Respondent, for his part, would additionally draw to the Court's attention the following pertinent provisions of the State of Indiana Constitution, Statutes and Rules:

(a) *Constitution of Indiana, Article 7.*

"§ 1. Judicial power.—The judicial power of the State shall be vested in one Supreme Court, one Court of Appeals, Circuit Courts, and such other courts as the General Assembly may establish. [As amended November 3, 1970.]"

"§ 4. Jurisdiction of Supreme Court.—The Supreme Court shall have no original jurisdiction *except in admission to the practice of law; discipline or disbarment of those admitted;* * * *" (Emphasis added)

(b) *Statutes*: References are to Burns Indiana Statutes Annotated Code Edition.

33-2-1-1. "The Supreme Court shall consist of five (5) judges, any three (3) of whom shall form a quorum and shall have jurisdiction in appeals coextensive with the state."

* * *

"*33-2-1-3.* [4-109]. Authority.—Such court shall have authority,

"First. To frame, direct and cause to be used, all process; to establish modes of practice which may be necessary in the exercise of its authority; and make regulations respecting the same, and cause them to be printed.

* * *

"Fourth. To establish regulations respecting proceedings which are requisite in such court in the exercise of its authority, not specially provided for by law. [2 R.S. 1852, ch. 1, § 5, p. 1.]"

* * *

"*33-2-3-1* [4-7405]. Admission to practice law—Restraint against unauthorized practice—Jurisdiction of Supreme Court.—The Supreme Court of this state shall have exclusive jurisdiction to admit attorneys to practice law in all courts of the state and exclusive jurisdiction to issue restraining orders and injunctions in all cases involving the unauthorized practice of the law under such rules and regulations as it may prescribe. [Acts 1931, ch. 64, § 1, p. 150; 1951, ch. 143, § 1, p. 382.]"

* * *

"*33-2.1-2-1* [4-7711]. Supreme Court—Judges—Quorum—Jurisdiction.—The Supreme Court shall consist of five [5] judges, any three [3] of whom shall constitute a quorum and shall have jurisdiction as provided by the constitution of Indiana. [IC 1971, 33-2.1-2-1, as added by Acts 1971, P.L. 427, § 3, p. 1979.]."

* * *

"*33-2.1-3-1* [4-7731]. Jurisdiction.—The Supreme Court shall adopt and publish rules in conformity with chapter 2 [33-2.1-2-1—33-2.1-2-7] of this article specifying the terms and conditions under which the Supreme Court and the Court of Appeals shall exercise jurisdiction. [I.C. 1971, 33-2.1-3-1, as added by Acts 1971, P.L. 427, § 4, p. 1979.]"

(c) *Indiana Supreme Court Rules*:

"In the Matter of the Adoption of Rules of the Court

"Whereas, this Court has inherent power to make rules of procedure and also has such power pursuant to the authority granted by the General Assembly of Indiana by Acts of 1937, ch. 91, § 1, p. 459,*

And Whereas, this Court received a proposed final draft of new Rules of Civil Procedure in October of 1968 from the Civil Code Study Commission of Indiana,

And Whereas, this Court thereupon referred this proposed final draft of new Rules of Civil Procedure to the Advisory Committee of this Court on Revision of Rules of Procedure and Practice for consideration and study and to receive suggestions from members of the Bar and legal community with reference to the new Proposed Rules,

And Whereas, the Committee of this Court on Revision of Rules of Procedure and Practice did report to this Court that it had completed its study of the new Proposed Rules and recommended that the Court adopt said Rules with some modification,

And Whereas, this Court immediately commenced its own study of the new Proposed Rules which study is now completed,

And Whereas, during the period of study by the Court, the Indiana General Assembly enacted

---

* 34-5-2-1 [2-4718]. Pleading and practice—Supreme Court authorized to adopt rules.—All statutes relating to practice and procedure in any of the courts of this state shall have, and remain in, force and effect only as herein provided. The Supreme Court shall have the power to adopt, amend and rescind rules of court which shall govern and control practice and procedure in all the courts of this state; such rules to be promulgated and to take effect under such rules as the Supreme Court shall adopt, and thereafter all laws in conflict therewith shall be of no further force or effect. * * *"

House Enrolled Act 1733 adopting the same new Proposed Rules with modification, said Act to become effective on and after January 1, 1970, which Act contained the following section recognizing the inherent power of this Court to amend the procedural rules contained in the enactment:

> 'SEC. 2. The General Assembly of the State of Indiana affirms the inherent power of the Supreme Court of Indiana to adopt, amend and rescind rules of Court affecting matters of procedure, and the General Assembly reaffirms the power given to the Supreme Court to adopt, amend and rescind rules of Court, including these rules of Court herein adopted, as set forth by the Acts of the General Assembly of 1937 at Chapter 91, Section.'

And Whereas, this Court has made additional modifications of the procedural rules contained in the said enactment, NOW THEREFORE,

IT IS ORDERED AND DECREED THAT

1. The compilation of procedural rules, appended to this Order, are hereby adopted as the Rules of Procedure of the Indiana Supreme Court, such rules to become effective immediately following midnight of the 31st day of December, 1969; and

2. The current rules of the Supreme Court of Indiana shall remain in effect until midnight on the 31st day of December, 1969, when they shall be abrogated and superceded by the appended rules; and

3. Section 3 of the enactment of the 1969 General Assembly of Indiana, entitled House Enrolled Act No. 1733, is set out herein in full and appended to this Order for use in determining which statutes have been specifically repealed by said enactment, which section this Court does not intend to affect in any manner by this Order; and

4. The rules appended to this Order shall supercede all procedural statutes in conflict therewith.

It is so ordered this 29 day of July, 1969.

ROGER O. DEBRULER
CHIEF JUSTICE"

* * * *

Admission and Discipline Rule 1.

"THE BAR OF INDIANA

"The bar of this state shall consist of all attorneys in good standing who, prior to July 1, 1931, were duly admitted to practice law by the circuit courts of this state, and all attorneys in good standing who, subsequently thereto, have been or hereafter shall be admitted to practice by this court."

* * * *

Admission and Discipline Rule 4.

"ROLL OF ATTORNEYS

"A record shall hereafter be made and entered on the order book of this court of the admission, enrollment, resignation, suspension, disbarment, reinstatement, and recertification of any and all members of the bar of this court. * * *"

* * * *

Admission and Discipline Rule 23.

"DISCIPLINARY COMMISSION AND PROCEEDINGS

"Section 1. General Principles

"Each person granted the privilege to practice law in this State has the obligation to conduct himself at all times in a manner consistent with the trust and confidence reposed in him by this Court and in a manner consistent with his duties and responsibilities as an officer or judge of the courts of this State. *This Court has exclusive jurisdiction of*

all cases in which an attorney who is admitted to the bar of this Court or who practices law in this State (hereinafter referred to as 'attorney') *is charged with misconduct.* The procedures hereinafter set forth shall be employed and construed to protect the public, the court and the members of the bar of this State from misconduct on the part of attorneys and to protect attorneys from unwarranted claims of misconduct.

"The term 'attorney' as used in this rule shall include, in addition to all persons admitted to the bar of this Court, or who practice law in this State, any and all judges of any and all courts of this State now in existence or hereafter created or established."

* * * *

"Section 14. Proceedings Before the Hearing Officer

"(a) * * *"

"(b) * * *"

"(c) * * *"

"(d) * * *"

"(e) * * *"

"(f) Within thirty (30) days after the conclusion of the hearing, the hearing officers shall determine whether misconduct has been proven by a preponderance of the evidence and shall submit to the Supreme Court written findings of fact. Recommendations concerning the disposition of the case *may* be made by the hearing officer in his discretion. A copy of said findings and any recommendations shall be served by the hearing officer on the respondent and the Executive Secretary of the disciplinary commission at the time of filing same with the Supreme Court. (Emphasis added)

"(g) * * *"

"Section 15. Supreme Court Review

("a) The respondent, complainant or Commission shall have thirty [30] days after the filing of the

hearing officers findings and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer *the Supreme Court shall enter judgment or such other appropriate order in the premises.*

"(b) Upon receipt of written recommendation for suspension pending final determination of the cause, this Court may forthwith enter an order of suspension thereon. Respondent shall have fifteen [15] days thereafter to petition this Court for a review and a dissolution of such order.

"(c) *In the event that this Court grants a petition under this Section 15, briefs may be filed and oral arguments heard, as the Court shall determine.* Such briefs need not conform to the rules of this Court. Upon a review the *Court shall determine whether the findings and recommendations of the hearing officer or officers are supported by sufficient evidence and shall enter its judgment, with or without opinion as the Court shall determine.* (Emphasis added)

IV.

QUESTIONS PRESENTED FOR REVIEW

Petitioner's corresponding section is found at p. 3 of his petition, and sets forth three (3) "Questions Presented". It is respectfully submitted that petitioner's dissertations under this section are not sufficient to serve any purpose intended under Supreme Court Rule 40(1)(d)(1).

A study of the Indiana Law, set out in Section "III" hereof, *supra*, together with the decision and opinion of the Supreme Court of Indiana disbarring petitioner, as

well as the petition for Writ of Certiorari and accompanying appendix filed by petitioner, give rise to the following questions:

A.

IS PETITIONER'S MATTER, EITHER IN FORM OR IN SUBSTANCE, SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT TO CONSIDER ISSUANCE OF ITS WRIT OF CERTIORARI?

B.

WAS PETITIONER DENIED OR DEPRIVED OF A "RIGHT" BESTOWED, GUARANTEED AND PROTECTED BY THE UNITED STATES CONSTITUTION WHEN THE SUPREME COURT OF INDIANA, ON REVIEW OF THE PROCEEDINGS BEFORE ITS HEARING OFFICER, DETERMINED TO DISBAR PETITIONER ON THE BASIS OF THE RECORD OF PROCEEDINGS AND BRIEFS FILED, WITHOUT AFFORDING FURTHER EVIDENTIARY HEARING, OR GIVING PETITIONER FURTHER NOTICE OF THE INDIANA SUPREME COURT'S INTENTION TO DISBAR?

C.

DID PETITIONER RAISE AND PRESERVE IN THE PROCEEDINGS IN STATE COURT THE CONSTITUTIONAL ISSUES WHICH HE NOW SEEKS TO ASSERT?

D.

HAS PETITIONER ACCURATELY PORTRAYED TO THIS COURT THE NATURE OF THE "RIGHT" SOUGHT TO BE PROTECTED, BEING HIS RIGHT TO CONTINUE TO PRACTICE LAW IN THE METHOD AND MANNER HE HAS CHOSEN.

V.

STATEMENT OF THE CASE

Petitioner's "STATEMENT OF THE CASE" appears on pp. 6-12, inclusive, of his petition. This statement is largely generalized allegation of a conclusory nature, but, more importantly, it is laced with inaccuracy and misrepresentation.

For example:

(a) At page 7 of his petition, Crumpacker asserts that a now deceased lawyer, Edmond J. Leeney, instituted informal proceedings against petitioner in the State Supreme Court by writing an ex parte letter to the Chief Justice on 1-27-72, and he goes on to say that up until that time he had never been charged with misconduct or unprofessional conduct of any kind. This simply is not true. The United States Court of Appeals for the Seventh Circuit, as far back as June, 1961, not only charged petitioner with misconduct, but found him guilty on the record in the case of *In re Woodmar Realty Company*,* 294 F. 2d 785, as follows:

> "From the foregoing summary of some pertinent parts of the record facts in this cause emerges a pattern of conduct which has characterized the actions of counsel [Crumpacker] for appellant in this case for some ten years. . . .
>
> "There is, however, more involved here than the time element, namely, *a vituperous tendency of counsel to read some heinous motive into the acts of anyone who dares to oppose him and of every judge who rules adversely to him*. . . .

* Full opinion is set out in Respondent's Appendix at pp. A47 to A66.

"We think that fact of timing is significant, and it is certainly consistent with the pattern which the record reveals of *charging both the dead and the living with fraud whenever an adverse ruling is contemplated or becomes a reality.*

"Although formal charges are confined to the trustee and his counsel, appellant's brief reveals that the *trial judges are not immune from similar attack. We abhor the insinuations that every trial judge, except the late Judge Parkinson, who has been burdened by this case since 1951, is either a blundering idiot, or, impliedly, a tool of some heinous scheme.* Those insinuations cannot be justified by anything which appears of record. Moreover, they are apparently motivated by the same lack of honesty which is apparent in the circumstances surrounding Judge Swygert's order disqualifying himself.

. . .

"We find nothing of factual averment, but a wealth of conclusionary statements which lead invariably *to counsel's vitriolic conclusions that appellees, who dare to oppose him, are guilty of heinous misdeeds.*

* * *

"Because we are convinced that the record in this case *presents a contemptible, if not contemptuous, abuse of the legal processes of a federal court,* we have dwelt at length upon a historical resume of the record facts as they have come to our attention. We did that advisedly in order that there may be no mistake that we are cognizant of the nature and severity of the question with which we deal. *We find a sordid picture of the repeated use of ill-founded charges of fraud as a trial tactic which is foreign to established concepts of honest and ethical advocacy.* We want it clearly understood that repetition of that practice as disclosed by this record will not be tolerated in the futute.

(b) Judge James T. Moody in the case of *Bryant v. Klaas,* Lake Circuit Court, No. C 71-1384, found Owen W. Crumpacker in conflict of interest in bringing the action in that case. (See Respondent's Appendix, pp. A29 to A42.)

(c) Judge Albin Smith found Owen W. Crumpacker in contempt of court for keeping funds and files of a client he was not entitled to in the case of *State v. Kushner,* LaPorte Circuit Court, Cause No. C36721-C. (See Respondent's Appendix, pp. A45 to A46.)

(d) See *In re: Owen W. Crumpacker* (1955) 235 Ind. 135, 130 N.E. 2d 775 and *Mancuso v. Indiana Harbor Belt Railroad, Appeal of Owen W. Crumpacker* (1978, C.A. 7) 568 F. 2d 553. (Respondent's Appendix, pp. A67 to A74.)

(e) Owen W. Crumpacker continues in his misrepresentation of the Statement of the Case and with suggestions of impropriety on page 7, by stating:

> "The complaint was prepared with the assistance of two Hammond attorneys, Kenneth D. Reed and Harold Abrahamson, associates and partners of petitioner, practicing with him prior to January 13, 1973, . . ." There is no evidence in the record to support that allegation.

The record shows that the disciplinary proceedings were commenced by the filing of a complaint *by the Indiana Supreme Court Disciplinary Commission,* pursuant to admission and descriptive Rule 23, Section 12.

(f) Petitioner complains on page 8 that he was never interviewed or requested to furnish any evidentiary matter. Rule 23, § 10 provides a detailed method for investigatory procedures which were followed to the letter in the case below.

Petitioner fails to point out that he responded in detail and made no complaint that there was any defect in that procedure, which simply precedes the submission of materials to the Disciplinary Commission to determine if the Disciplinary Commission desires to proceed with discipline against an attorney. Petitioner's next statement that he first learned that formal charges were made against him in the Supreme Court from the filing of the Verified Complaint in the Supreme Court as published in the *Indianapolis Star* and the *Gary Post-Tribune* on September 18, 1974, is again an effort to distract the Court from the true issues.

Petitioner's statement that , "[o]n November 9, 1976, Judge Douglas, the Hearing Officer, entered his findings of fact, conclusions of law, and recommendations. (All in petitioner's favor)." is not an accurate statement of the hearing officer's decision. Judge Douglas' findings of fact are contrary to his conclusions and require disciplinary action. The Supreme Court has repeatedly stated that the hearing officer does not bind the Supreme Court, but rather simply makes findings and recommendations, the Supreme Court reviews the record and makes its own original findings and decision as to discipline. Petitioner's statement that he was "found innocent" is not consistent even with the hearing officer's findings where a reading of the findings will show that he was found guilty, but the conduct excused or forgiven in most cases. The Supreme Court did not take such a forgiving attitude, and a review of their findings based upon the evidence in the record makes it obvious that the conduct was serious, repetitive and that the discipline of petitioner was demanded by his conduct.

Again, on page 11, petitioner misrepresents that the Supreme Court did not act upon respondent's Petition for Review. The Supreme Court did grant respondent's Petition for Review and received extensive briefs from petitioner herein, as well as respondent.

Petitioner further misstates the record in stating that "Neither of the respondents challenged the Hearing Officer's findings . . ." Respondent, in detail, challenged the Hearing Officer's findings and conclusions and recommendations as required, and as the record shows.

A full evidentiary hearing having already been had, (with the full right of presentation of witnesses and cross-examination, issuance of subpoenaes, etc.) no further similar proceedings were held, by the Supreme Court of Indiana. Rather, a review of the record of the hearing on discipline, including a complete transcript of the hearing, including evidence, arguments (the briefs were several volumes in length), and every issue petitioner herein would present was before the Supreme Court when it made its findings of fact and conclusions of law, and entered its order of disbarment. No issues were raised or preserved by petitioner as to any of the issues raised on pages 10, 11 and 12 of his petition.

VI.

ARGUMENT

A.

PETITIONER'S MATTER IS NOT, EITHER IN FORM OR IN SUBSTANCE, SUFFICIENT TO INVOKE THE JURISDICTION OF THIS COURT TO CONSIDER ISSUANCE OF ITS WRIT OF CERTIORARI.

Supreme Court Rule 24(2) states, in part, that:

"* * * Objections to the jurisdiction of the court to grant writs of certiorari may be included in briefs in opposition to petitions therefor."

Supreme Court Rule 19 provides, in part, as follows:

"Considerations governing review on certiorari

1. A review on writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons therefor. The following, while neither controlling nor fully measuring the court's discretion, indicate the character of reasons which will be considered:

(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court."

28 U.S.C. § 1257 provides, in pertinent part, as follows:

"State courts; appeal; certiorari

Final judgments or decrees rendered by the highest court of a State in which a decision can be had, may be reviewed by the Supreme Court as follows:

* * * *

(3) By writ of certiorari, where the validity of a treaty or statute of the United States is drawn in question or where the validity of a State statute is drawn in question on the ground of its being repugnant to the Constitution, treaties or laws of the United States, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States. June 25, 1948, c. 646, 62 Stat. 929."

Petitioner has asserted, only in conclusory fashion, that under the United States Constitution he had a protected right to have a separate, second and independent evidentiary hearing before the Supreme Court of Indiana, upon notice, before that Court could lawfully disbar him. However, petitioner has failed to cite any Federal or State constitutional provision, statute, case precedent, rule or regulation, in support of his conclusions. The authorities cited, set forth, and relied upon, by this Respondent, in Section "III" of this brief, clearly outlined the Rules, substantive and procedural, for dealing with matters of discipline of attorneys. Nowhere in the petition has petitioner, by factual reference or by case citation, maintained that such rules are unconstitutional on their face, or that such rules were not followed by the Indiana Supreme Court. Therefore, inasmuch as no other or further record of proceedings of the State Court matter is before this Court, it is respectfully submitted that no question is presented, much less a "substantial" federal question. It necessarily follows that petitioner has failed to invoke the jurisdiction of the Court.

The petition is deficient for failure to comply with Rule 23, and, more particularly, for failure to comply with Rule 23, (1)(f) and (h). Pursuant to provisions of

Rule 23(4) petitioner's failure is, in itself, a sufficient reason for denying the petition. A collection of cases under former Rule 38(2) can be found in CONSTRUCTION AND APPLICATION OF RULE 23 OF RULES OF SUPREME COURT PRESCRIBING REQUIREMENTS OF PETITION FOR CERTIORARI, 32 L. Ed. 2d 830 (1972).

B.

PETITIONER WAS NOT DENIED OR DEPRIVED OF A "RIGHT" BESTOWED, GUARANTEED AND PROTECTED BY THE UNITED STATES CONSTITUTION WHEN THE SUPREME COURT OF INDIANA, ON REVIEW OF THE PROCEEDINGS BEFORE ITS HEARING OFFICER, DETERMINED TO DISBAR PETITIONER ON THE BASIS OF THE RECORD OF PROCEEDINGS AND BRIEFS FILED, WITHOUT AFFORDING FURTHER EVIDENTIARY HEARING, OR GIVING PETITIONER FURTHER NOTICE OF THE INDIANA SUPREME COURT'S INTENTION TO DISBAR.

Indiana Supreme Court Rules governing the disciplining of attorneys are in no way unique or novel as written, or as administered in this case.

Petitioner's contention, when boiled down to its sparest form, is that the rules should have entitled him to an oral, evidentiary hearing before the Indiana Supreme Court, as a condition precedent to disbarment, where the Hearing Officer had not concluded misconduct warranting discipline. One can always make the bare allegation, as petitioner does, that he had those rights under the letter or spirit of the rules. But a fair, simple reading of the rules fails to support such an assertion.

The petitioner's contentions could only have merit, if at all, if and in the event the State Supreme Court was strictly a court of error in disciplinary matters, where, as a purely appellate tribunal, it had to accept findings

of fact, if proved by sufficient evidence, as true, and view them in a light most favorable to the appellee, and simply reverse and grant a new trial, for plain error arising on the record and briefs, properly raised and preserved below.

However, that is not the role of the State Supreme Court in disciplinary matters. By constitution, statute, rule and case precedent, the Supreme Court is a court of not only exclusive, but original and final jurisdiction in such matters.

Constitution of Indiana, Article 7. (Text in Section "III", *supra*)

Burns' Indiana Statutes, Annotated Code Edition: 33-2-1-1; 33-2-1-3; 33-2-3-1; 33-2.1-2-1; 33-2.1-3-1; 34-5.2-1 (text in Section "III" *supra*)

Supreme Court of Indiana Admission and Discipline Rules 1, 4, and 23. (Text in Section "III", *supra*)

In re: Wireman (1977) ..... Ind. ....., 367 N.E. 2d 1368 (Cert. denied, 56 L. Ed. 2d 402;

In re: Murray (1977) 266 Ind. 221, 362 N.E. 2d 128, appeal dismissed, 54 L. Ed. 2d 777;

In re Pawlowski (1959) 240 Ind. 412, 165 N.E. 2d 595;

In re: Smith (1976) 266 Ind. 6, 361 N.E. 2d 1.

It is clear from an examination of the foregoing that disciplinary proceedings start and end only with the Supreme Court, whether the hearing officer's findings are favorable or unfavorable. *Rule A.D. 23, § 15, (a), supra,* (last sentence), shows that the Supreme Court must enter an order on the hearing officer's findings whether unfavorable or favorable, *even if they're not challenged by either party to the controversy.*

Petitioner has not placed before this Court the record of proceedings in the State Court to factually support his

assertions regarding "notice" and an opportunity to be "heard" before the Indiana Supreme Court. However, petitioner does reprint, in his Appendix, the decision and opinion of the State Court disbarring him as an attorney. And this opinion makes reference to certain telling facts:

(a) That petitions for review *were* filed under Rule A.D. 23, 15; (App. A20)

(b) That Crumpacker acknowledged this filing by submission of objections and supplemental objections; (App. A20)

(c) That all sides filed full briefs on the merits; (App. A20)

(d) That the State Court separately considered decided and wrote an opinion, not only on the merits, but upon Crumpacker's motions and objections as well; (App. A21-A26).

(e) The Supreme Court then went on to comment that:

> "The remaining portion of the petitions for review filed by the Disciplinary Commission and the complainant, and the objections and supplemental objections filed by the Respondent concern the substantiation of alleged acts of misconduct and the factual and legal conclusions to be drawn from the factual findings. These issues are resolved through the review process employed by this Court in disciplinary matters. Ultimate findings of fact upon which a determination of misconduct is weighed are reached through a complete examination of all pleadings, including the transcript. The findings of the Hearing Officer are considered; however, they are not controlling on this Court. *In re Wireman, Supra, In re Murray, Supra, In re Pawlowski,* (1959) 240 Ind. 412, 165 N.E. 2d 595." (App. A27)

Hence, contrary to petitioner's allegations, he was granted full "notice" and a full opportunity to be heard, and, moreover, he took full advantage of those opportunities. Petitioner was even permitted to have custody, pending review, of the documentary exhibits in the case (outside the 4700 page record of testimony). As noted by the Supreme Court:

> "Although stating that he would do so and although being requested to do so on several occasions, the Respondent has failed to return the exhibits placed in his custody and care." (App. A28)

Therefore, it is respectfully submitted that there is no rule of law granting petitioner a right to more notice or hearing before the Indiana Supreme Court than that with which he was afforded, nor does the United States Constitution require that petitioner be afforded greater rights than those afforded under the rules, and taken advantage of, by petitioner.

C.

PETITIONER DID NOT RAISE AND PRESERVE IN THE PROCEEDINGS IN STATE COURT THE CONSTITUTIONAL ISSUES WHICH HE NOW SEEKS TO ASSERT.

The only references in the petition for writ (or the petitioner's Appendix) having to do with petitioner's "efforts" to raise his "substantial federal question" in the State proceedings (as required under Rule 23(1) (f) and numerous case precedents), appear at p. 12 of his petition. At this point, petitioner refers the Court to certain allegations in certain motions he filed which are *partially* reproduced in the accompanying Appendix. (Motions filed both before and after the hearing before the Hearing Officer and the proceedings before the

State Supreme Court). Petitioner's references are to Appendix, pp. A85-A112; A21, 22; A113-115; A1, 2.

An examination of each of these references reveals as follows:

(1) *A85-A112*: This is a pre-hearing motion to dismiss addressed to the hearing examiner which nowhere raises the issue of the lack of jurisdiction of the Supreme Court to view a case and reach a conclusion different from that of the hearing officer. Rather, well into the prehearing motion, and commencing at A96, petitioner commences to address his "constitutional" objections to each count of the multi-count verified complaint. His first statement in rhetorical paragraph "(7)" of the motion at A96 is broad form and conclusory wherein he said he hasn't been afforded certain rights. These "rights" do not exist under any pre-trial law and ordinarily occur only *at* a trial and not prior to a trial. Then, for the next several paragraphs (A96-100) petitioner states the conclusion that the Disciplinary Procedures are such as to violate his right under the Fourteenth Amendment, but he doesn't say how. Rather, he gives his version of his squabble with an attorney named Ed Leeney in a lawsuit they had together.

Then petitioner abandons his constitutional complaints for a couple of pages and resumes at A102-104 where he merely quotes various constitutional provisions without reference to any facts. *There then ensues for the next several pages of this reference (A105-112) a detailing by petitioner of the various counts filed against him where he maintains that the facts alleged can't be the subject of charges of professional misconduct because each set of facts also constitutes either a crime or a contempt of court, and that being the case, he's entitled to be tried in criminal court, or for contempt, where he'd have more*

constitutional rights to be protected, and therefore is immune from culpability or redress for professional misconduct.

Needless to say, these arguments were not asserted in the State Supreme Court, nor are they urged in this Court.

(2) The next reference is to A21,A22, which simply consists of the first two (2) pages of the State Supreme Court's opinion where the Court recites that petitioner has asserted that his constitutional rights were violated and that Disciplinary Rule 23 violates these rights, but without setting out any specifics.

(3) The next reference, A113-A115, consists of printed *excerpts* from a *post* disbarment motion filed by petitioner where he asserted—after disbarment—that, under the 1st and 14th Amendments to the United States Constitution, he was entitled (under Disciplinary Rule 23, § 15, A and D) to a hearing and notice before the Supreme Court as a condition precedent to the disbarment order. Disciplinary Rule 23, § 15, had a subparagraph "(a)" when the hearing officer's "findings" were filed in 1976 which provided as follows:

> "(a) the respondent, complainant or Commission shall have thirty [30] days after the filing of the hearing officer's finding and recommendation to petition for a review of the same before the Supreme Court. If no petition for review is filed within thirty [30] days of the finding and recommendation of the hearing officer *the Supreme Court shall enter judgment or such other appropriate order in the premises.*" (Emphasis added)

However, sub-paragraph "(d)" was not added until some time later, but was effective when the disbarment opinion was entered on November 29, *1978*. This subparagraph read as follows in 1978:

"(d)" The complainant and the respondent shall be given not less than fifteen (15) days written notice of the hearing date. The respondent shall have the right to attend the hearing in person, to be represented by counsel, to cross-examine the witnesses testifying against him and to produce at the hearing and require the production of evidence and witnesses in his own behalf at the hearing, as in civil proceedings. All subpoenas or other proceedings and all notices connected with processing of such complaint shall be issued only under the direction of the hearing officer or hearing officers, and no other court or judicial officer of this State shall have jurisdiction to issue any orders or processes in connection with a disciplinary complaint."

Nowhere in Rule 23, § 15, in sub-paragraphs "(a)" or "(d)", or anywhere else, is petitioner accorded a right to notice or a further evidentiary hearing before the Supreme Court, except the notice of rights and time limits for petitions and briefs, and the "hearing" afforded by such writings.

(4) The final reference, A1, A2, consists of the Indiana Supreme Court's order denying petitioner post-decision motions, and nowhere is there any reference made to constitutional arguments or questions.

Hence, it is respectfully submitted that the petition and supporting appendix, which is all that petitioner has placed before this Court, fail to demonstrate that any federal question was presented to the state court, at any stage of the proceeding, or in any manner contemplated under the requirements of Supreme Court Rule 23(1)(f).

D.

PETITIONER HAS NOT ACCURATELY PORTRAYED TO THIS COURT THE NATURE OF THE "RIGHT" SOUGHT TO BE PROTECTED, BEING HIS RIGHT TO CONTINUE TO PRACTICE LAW IN THE METHOD AND MANNER HE HAS CHOSEN.

Petitioner asserts, inter alia, in various and sundry places and stages in his Petition for Writ of Certiorari as follows:

(a) That he ". . . had never been charged with misconduct of any kind, either by way of misdemeanor, felony, or otherwise, nor had any steps been instituted against him before any official or unofficial body charging him with unprofessional conduct." (Petition for Writ, page 7)

(b) "Petitioner was found innocent on each of the 20 counts of alleged professional misconduct made against him." (Petition for Writ, pages 9-10.)

(c) "The practice of law is accorded by the courts. It is not a matter of right of every citizen. However, once granted and exercised (as in this case for nearly 40 years) an attorney has the right to continuance of practice." (Petition for Writ, page 13)

(d) "Here, petitioner is a member of the Federal bar, and its component district and circuit court bars, as well as the Supreme Court of the United States. It is certain that at some time following this Court will be called upon to consider and rule upon a 'Federal disbarment' of Crumpacker."

(e) "A close critical examination of the total record below discloses that the 'misconduct' charged against the accused was discourtesy between counsel, and more properly a 'dispute' of one kind or another which first

was with his law office partners, and then which was enlarged and involved others."

* * *

"None of the acts and incidents should have been elevated to the level of a 'grievance'."

* * *

"Conduct which may be discourteous, noisome, or the like, even if disapproved by others, even a court, but which is absent of fraud and which does not evidence moral turpitude." (Petition for Writ, page 22)

(f) "The Supreme Court of Indiana should not deprive the petitioner of his standing before the courts." (Petition for Writ, page 23)

In other words, petitioner is trying to persuade this Court that the "right" sought to be protected before this Court to practice law in the Courts of the State of Indiana is a "right" which petitioner has held for 40 years, and which he has treated with the greatest reverence although sometimes he might be considered a touch overzealous, or noisome. An examination of the record tends to show that the "right" which petitioner is asking this Court to defend and protect at the cost and expense of the public, bench and bar in the State of Indiana is a "right" which petitioner has abused in a most vicious fashion imaginable for many years last past. The record shows in fact that petitioner has used a "right" to practice law as a sword to maliciously inflict grievous injury upon anyone and everyone who he determines, rightfully or wrongfully, to be his adversary.

As early as 1961 the Seventh Circuit Court of Appeals in the case of *In re Woodmar Realty Company*, 294 F. 2d 785, actually adjudicated petitioner's propensity for

doing violence to his "right" to practice law. (The quotes from the Woodmar Realty Company case are set forth in *Section V, STATEMENT OF THE CASE*, supra.)

But there are yet further documented examples of the petitioner's use of his sacred "right" to practice law. As previously mentioned in this brief, Crumpacker was found guilty of representing conflicting interests in the case of *Bryant v. Klaas*, decided in the Lake Circuit Court, Cause No. C 71-1384. (The Court's findings and order are reprinted at length in the Respondent's Appendix tendered herewith at pp. A29 to A42.)

Similarly, Judge Alban Smith of the LaPorte Circuit Court found Crumpacker guilty of contempt and ordered him incarcerated for wrongfully withholding a client's funds and files and then disobeying a Court order to return them to the client. (The Court's orders are reprinted in Respondent's Appendix tendered herewith at pp. A43 to A46.)

As recently as 1978, the Seventh Circuit Court of Appeals again had occasion to consider the conduct of Crumpacker in the case of *Mancuso v. Indiana Harbor Belt Railroad* (Appeal of Owen W. Crumpacker) 568 F. 2d 553. (Reprinted in Respondent's Appendix tendered herewith at pp. A71 to A74.) In that case, Federal Judge Eschbach entered an order requiring Crumpacker to show cause why he should not be suspended from the practice of law for wrongfully failing to conclude a settlement made mid-trial charging his adversary with fraudulently inducing Crumpacker to enter into the settlement. The decision of the Indiana Supreme Court disbarring Crumpacker and the Court's written opinion thereon are set forth at length in petitioner's own Appendix at pages A20-A77. A reading of that Opinion

discloses misconduct (by citation to the record of proceedings proper) so gross and abusive as to almost defy description.

The Hearing Officer essentially found that the misconduct charged had occurred, but that in his opinion such conduct only showed that petitioner "can be a difficult man; one who has pushed and bullied Judges and attorneys for years." (Petitioner's Appendix, page A18)

All through the Indiana Supreme Court's opinion, as found in petitioner's Appendix, references are made by specific quotes to the kind of statements petitioner had made to people in the course of his practice of law. In fact, the Supreme Court paused to notice, by direct quotes from the record of proceedings, the attitude exhibited by petitioner during the course of conduct of the disciplinary proceedings before the Hearing Officer. (See petitioner's Appendix, pages A72-A76.) Of course, there's more . . . much, much more . . . , but to interject those matters would be to proceed dehors the record. One would think that the foregoing record citations would be sufficient unto themselves. The ineluctable conclusion to be drawn from the foregoing is that the petitioner in this proceeding is asking the United States Supreme Court to exercise its sound discretion to issue its extraordinary writ to preserve and protect a "right" of an attorney to continue the kind of practice of law which is exhibited by the foregoing references, a right which petitioner himself has abused for years, a right which should be considered both sacred and noble, but which petitioner has besmirched in grotesque fashion.

It is respectfully submitted that it would be fitting that petitioner's own misconduct preclude him from consideration by this Court.

VII.
CONCLUSION

Petitioner has failed to invoke the jurisdiction of the Supreme Court of the United States. He has failed to preserve or present to the Court any substantial Federal question and has failed to demonstrate by record or by argument any right to review. No case is presented for the exercise by the Supreme Court of its sound discretion to issue its extraordinary Writ of Certiorari in the case at bar.

Respectfully submitted,

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